

# Removal of Child from Home

Rhode Island Department of Children, Youth and Families

**Policy: 500.0075**

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The federal Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Adoption and Safe Families Act of 1997 (P.L. 105-89) and Rhode Island General Law (RIGL 40-11-12.2 and 42-72-11) require the Department to make reasonable efforts to prevent or eliminate the need for placement of a child outside the home. Reasonable efforts include an assessment of the individual child and family situation to evaluate the appropriateness, availability and accessibility of preventive services. Assistance to help the family access needed services must also be offered. A parent's willingness to participate in a plan intended to prevent out of home placement should be considered in determining the degree of risk to a child if left in his/her home.

Every child has the right to feel physically and emotionally secure in his or her home environment. This focus on child safety and well-being must be the paramount concern when making decisions regarding services, placement and permanency. Although the Department maintains children in their own homes whenever possible, certain events in a child's life may require consideration of a temporary or long-term placement outside the home.

In the event that any child is removed from home, the Department is obligated under federal and state law (RIGL 40-11-12.2,14-1-27) to investigate the possibility of placing the child or children with a fit and willing relative who does not reside with the child's parents.

There are specific circumstances when federal and state law do not require the Department to make reasonable efforts to preserve and reunify families. Reasonable efforts are not required and the Department may petition the Court for termination of parental rights if the Court has determined:

- The parent has subjected any child to conduct of a cruel and abusive nature
- The parent has committed murder of another child of the parent
- The parent has subjected the child to aggravated circumstances, including abandonment, torture, chronic abuse and sexual abuse
- The parent has committed voluntary manslaughter of another child of the parent
- The parent has aided or abetted, attempted, conspired or solicited to commit such a murder or such a voluntary manslaughter
- The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent
- The parent has had his/her parental rights to a sibling of the child terminated involuntarily

State law (RIGL 40-11-5) provides that physicians/nurse practitioners, law enforcement officers and authorized Child Protective Investigators/ Social Caseworkers II shall have the right to take temporary protective custody of a child without the consent of a parent or legal guardian. When a protective custody hold has been authorized, Child Protective Services hotline should be notified immediately to initiate an investigation.

Any physician or nurse practitioner treating a child who has suffered physical injury that appears to have been caused by other than accidental means or a child suffering from malnutrition or sexual molestation has the right to keep the child in a hospital or a licensed child care facility for not longer than 72 hours. If a child is not in need of hospitalization, the Department will determine if placement with a fit and willing relative is appropriate.

Any police or law enforcement officer can take a child into protective custody and place the child with DCYF for not longer than 48 hours if the officer has reasonable cause to believe that imminent danger to the child's life or health exists.

An authorized Child Protective Investigator or Social Caseworker II may take a child into Protective Custody for 48 hours if that worker has reasonable cause to believe that the child or the sibling(s) has been abused and/or neglected and that continued care of the child by the parent or caretaker will result in further harm to the child. When a Child Protective Investigator or Social Caseworker II is considering the removal of a child from the home, a Safety Assessment should be completed to evaluate the imminent risk of harm to the child. Some of the factors which must be considered when making the decision to immediately remove a child from his/her home include:

- threat of danger to a child's life or health
- impairment to a child's physical or mental well-being
- dangerous environment including abandonment by a parent or caretaker, a dangerous parent/caretaker due to mental illness or drug or alcohol abuse, a sexually assaultive parent/caretaker, or a parent/caretaker who refuses to remove a child from dangerous surroundings
- child is in danger and the parent is threatening to flee

The Child Protective Investigator or Social Caseworker II who removes the child or sibling(s) from the home is responsible to have the child or sibling(s) examined by a physician or nurse practitioner within 24 hours of being placed on a protective hold.

In each instance when the Department has reason to believe that a child has been harmed and/or that there exists an imminent risk of substantial harm to a child, the Department is authorized to file an ex parte petition with the Family Court. In its petition, the Department is seeking immediate judicial authorization to place a child outside the home of the parent or other lawful guardian. According to state law (RIGL 40-11-7), the Department is required to present its ex parte petition either prior to the removal of a child or prior to the expiration of a 48 hour or 72 hour child protective hold. If a child removed from the home on a protective custody hold has no legal status with the Department and cannot be safely returned home, the Child Protective Investigator or

Social Caseworker II must file an Affidavit in Support of Order of Detention, Ex Parte Petition, prior to the expiration of the protective hold.

In cases where the Department has an outstanding custody petition (straight or ex parte) pending before the Family Court, and has been granted legal supervision, temporary custody or commitment on a child and the Social Caseworker II or Child Protective Investigator has made a determination with supervisory consultation that there exists a substantial risk of imminent harm to a child which requires the immediate removal of a child from the home of a parent, the Department must file an Emergency Motion for a Change of Placement with the Family Court. In such cases, the Department may authorize the removal of a child from the home of a parent by a 48 hour or 72 hour protective custody hold or as a result of authorization by a Justice of the Family Court. **If a child has been removed from the home as a result of a protective custody hold, the Department must present the Emergency Motion for a Change of Placement to the Family Court prior to the expiration of the 48 hour or 72 hour protective custody hold without regard to whether or not the Department has been previously granted discretion to place the child.**

State law requires Family Court to immediately take any action it deems necessary or appropriate for the protection of the child, including the removal of the child from the custody of the caretaker, pending a trial on the merits. Parents must be afforded an opportunity to participate in a full evidentiary hearing regarding the decision to remove a child from the home. Federal law also requires that a judicial determination must be made by Family Court in the first court order sanctioning the removal of a child from the home of a parent as contrary to the welfare of the child to remain in the home. Additionally, a judicial determination relating to reasonable efforts to prevent the removal of a child from the home must occur within 60 days of the date the child was removed from home. These judicial determinations must be made in order to claim federal reimbursement of the state's cost for foster care and must include a finding by a Family Court Justice that:

“The continuation of the child in the home of the parent is contrary to the best interest of the child; The child requires the protection and assistance of the State; and The State has made reasonable efforts to prevent or eliminate the need for removal; (or in the alternative) That reasonable efforts to prevent or eliminate the need for removal are unnecessary due to the substantial or immediate danger to the child.”

In Rhode Island, both of these judicial findings are set forth in the initial order authorizing the removal of the child from the home.

Rhode Island General Law 42-72-14 allows the Department to remove a child from the home in some situations on a voluntary basis when the parent/caretaker consents to the placement of the child. Voluntary placements need prior administrative approval and should not be utilized when there is sufficient evidence of abuse or neglect to pursue legal action. (Refer to [Policy 700.0015 Voluntary Placement](#) .)

**Related Procedures...**

[Removal of Child from Home - Protective Custody](#)

[Removal of Child from Home - Ex-Parte](#)

[Removal of Child from Home - Children Having Legal Status with the Department](#)

## Removal of Child from Home - Protective Custody

### **Procedure From Policy 500.0075: Removal of Child from Home**

- A. Physicians/nurse practitioners, law enforcement officers and authorized Child Protective Investigators (investigators)/Social Caseworkers II (caseworkers) are authorized by RIGL 40-11-5 to take temporary protective custody of a child without the consent of a parent or legal guardian.
1. A physician/nurse practitioner can place a 72 hour hold on a child who has suffered physical injury that appears to have been caused by other than accidental means or a child suffering from the effects of sexual molestation or malnutrition or other serious medical neglect:
    - a. Physician/nurse practitioner files a Report of Examination (#064) and authorizes the 72 hour hold.
    - b. Physician/nurse practitioner contacts the Call Floor to advise Child Protective Services of the hold. The matter is assigned for investigation. If the child is active with the Department, the Child Protective supervisor handling the assignment notifies the caseworker and/or Family Service supervisor immediately of the investigation and the name of the assigned investigator and his/her supervisor.
    - c. If the child requires medical treatment, the child may remain in the hospital during the course of the protective hold.
    - d. Any investigation of Level 2 or 3 will be raised to Level 1 if a 72 hour hold is invoked. When the Standard for Investigation is raised to Level 1, the investigator notifies the Office of Legal Counsel to discuss the need for legal action if the initial findings suggest substantiation.
  2. A law enforcement officer can invoke a 48 hour hold if he/she has reasonable cause to believe that imminent danger to the child's life or health exists. If a law enforcement officer places a child on a hold, he or she notifies the Call Floor. The matter is assigned for investigation. If the child is active with the Department, the caseworker and/or supervisor will be immediately advised of the investigation and the name of the assigned investigator and supervisor by the Child Protective supervisor handling the assignment.
  3. An authorized investigator or caseworker may take temporary protective custody of a child for 48 hours without the consent of the parent or guardian if a parent or caretaker is unwilling, unable or unavailable to cooperate in the protection of the child and the child would be at imminent risk of harm if left in the home.
    - a. Prior to the removal of a child from the home, the assigned caseworker or investigator assesses the safety factors outlined in the Safety Assessment.
      - i. If a determination is made that a 48 hour hold is not appropriate although legal action may be indicated, the

assigned caseworker or investigator discusses situation with supervisor and seeks a legal consult. (Please see procedures [Removal of Child from the Home - Ex Parte](#) and [Removal of Child from Home - Children Having Legal Status with the Department](#) and [Policy 1100.000 Obtaining Custody of Child Through the Dependent/ Neglected/ Abused Petition](#) .)

- ii. If a determination is made that a 48 hour child protective hold is necessary, the assigned caseworker or investigator should make every attempt if practical to seek supervisory approval beforehand when an emergency situation exists requiring the removal of a child. If unable to obtain prior approval, the investigator or caseworker notifies the supervisor or appropriate administrator of the child's removal from the home as soon as possible after the action is taken.
  - b. If a 48 hour protective custody hold is invoked by a caseworker or investigator, he/she must also do the following:
    - i. Contact law enforcement for assistance in removing the child when possible and considered necessary.
    - ii. Transport the child to the nearest medical facility if medical care is needed.
    - iii. Make every reasonable effort to notify the parent/caretaker of the action taken.
  - c. If a social caseworker initiates the protective hold, he/she must notify the Call Floor immediately to initiate an investigation of the allegations that prompted the caseworker to remove the child from home.
  - d. The investigator or social caseworker who removed the child is responsible to have the child examined by a physician or nurse practitioner within 24 hours.
- B. Whether a child is removed from the home by a 72 hour physician's hold, a 48 hour law enforcement hold or a 48 hour investigator/caseworker hold, the following additional steps must be followed:
- 1. If the child does not require hospitalization on a 72 hour hold and when a child is removed on a 48 hour hold, the assigned investigator or caseworker must investigate the possibility of placement for the child with a fit and willing relative who does not live with the parent/caretaker.
    - a. The primary worker must complete an assessment of the appropriateness of a relative placement within 30 days of placement. Documentation of this assessment must be included in the record.
    - b. If placement with relatives is explored, the assigned caseworker/ investigator must complete and approve the Bureau of Criminal Identification (#034) and DCYF (#035) clearances and the

Preliminary Assessment of the Family and Home (#036A) prior to placement.

2. If child does not require hospitalization (72 hour hold) or there is no fit and willing relative who can provide immediate care, the assigned investigator or caseworker notifies the Placement Unit by completing the Placement Unit Request form (in New Office Documents) and forwarding it electronically to the Placement Unit. If placement is needed after regular working hours, the caseworker or investigator contacts the Call Floor for placement.
  3. The Documentation of Temporary Protective Custody form (CPS #53) is completed and a copy is forwarded to the Call Floor as well as the Regional Director, if case is active in Family Services or the Juvenile Probation Administrator, if case is active in Probation.
  4. If a child, placed on a 72 hour or 48 hour hold, is placed in substitute care by a caseworker or investigator, the caseworker or investigator enters the appropriate information into RICHIST. If the placement is a licensed foster home, it is entered in the Out of Home Placement Window. If the placement is with a relative who is not yet certified/licensed, the information is entered in Living Arrangements Window. The Child Welfare Status is entered in the Court Activity Window and other pertinent information in Case Activity Notes.
  5. The circumstances surrounding a 72 hour or 48 hour hold are reviewed with supervisory staff. Each situation wherein a protective hold has been authorized should be reviewed with Legal Counsel unless administrative approval has been granted to let the hold expire and return the child home.
  6. If a decision is made to seek custody and/or placement beyond the 48 or 72 hours, an ex parte Order of Detention or an Emergency Motion for a Change in Placement/Custody must be filed in Family Court prior to the expiration of the hold.
  7. In the event that the 48 hour or 72 protective hold will expire on a weekend, the investigator or social caseworker must obtain a verbal ex parte Order of Detention from a Family Court Judge through the Department's Office of Legal Counsel prior to the expiration of the hold. The verbal ex parte must be documented in a Case Activity Note by the caseworker/investigator and a written ex parte petition must be filed by the caseworker/investigator the next working day.
- C. When a child who is not otherwise open to the Department is removed from home by an investigator, the investigator must send a partial packet to the intake unit by the beginning of the next workday, including copies of any material which may assist in providing services to the child or family. The case will be assigned online to the intake office supervisor by the Child Protective supervisor. The investigator must then complete the investigation in accordance with Policy [500.0095 Documenting Results of CPS Investigations in RICHIST](#).

## Removal of Child from Home - Ex Parte

### **Procedure From Policy 500.0075: Removal of Child from Home**

- A. An investigator or caseworker can seek an ex parte, Order of Detention to remove a child from the home or to continue the placement of a child who was removed from home by a 48 or 72 hour temporary protective hold.
- B. To determine whether an ex parte petition should be filed, an investigator or caseworker considers the following facts and evidence:
  - 1. The child will be in imminent danger of further harm if not removed from home.
  - 2. Reasonable efforts to provide supportive services to family unit would not alleviate risk of harm to the child.
  - 3. A Report of Examination (#064) stating that a child has been abused or neglected is considered prima facie evidence to support approval of the request for an ex parte. (The original #064 must be filed with the petition.)
- C. The investigator or caseworker consults with his/her supervisor and, if appropriate, Department Legal Counsel regarding the advisability of filing an ex parte petition.
- D. If it is decided that an ex parte will be filed, the following procedures are completed:
  - 1. A separate petition is prepared by Legal Counsel for each involved child. All supporting documentation provided by caseworker and investigator must include copies for each involved child.
  - 2. A "Summary of Facts to Substantiate Allegations of Abuse, Neglect, and/or Dependency" is prepared by the investigator or caseworker documenting the evidence supporting the allegations made in the petition and including any efforts made by the Department to alleviate the risk to the child. This Summary of Facts including the RICHIST ID # is presented to Legal Counsel along with a List of Witnesses.
  - 3. Legal Counsel prepares the Detention Order, the Affidavit in Support of the Order of Detention, ex parte and the petition.
  - 4. The investigator or caseworker signs the affidavit in the presence of a notary and brings the affidavit along with the petition to Family Court.
  - 5. The investigator or caseworker along with Legal Counsel presents the affidavit and petition to a Family Court Judge.
  - 6. If a Family Court Judge grants the ex parte, temporary custody of the child is awarded to the Department.
  - 7. If the Judge fails to grant the ex parte, the investigator or caseworker consults with his/her supervisor and Legal Counsel to consider available options, including petitioning the Court for a full hearing, pursuing a voluntary placement or delaying further legal action until more evidence is gathered.
  - 8. If the Judge grants the ex parte, the investigator or caseworker brings the signed Detention Order to the Juvenile Clerk's Office where an



arraignment date will be assigned and copies are processed and provided to the worker.

9. The worker forwards the Detention Orders via interoffice mail to the Associate Director for signature and a copy of the Detention Order is provided to the hospital if a child remains hospitalized.
10. The parent/guardian receives a summons to appear at the arraignment which will occur within seven days of the filing of the ex parte Order of Detention.
11. The investigator or caseworker is responsible for updating the appropriate information in the Court Activity Window in RICHIST.
12. At the arraignment, parents/legal guardians have the right to request a Probable Cause Hearing which must be scheduled by the Judge within ten days of the request. The investigator or social worker who obtained the ex parte must be present and prepared to testify at the Probable Cause Hearing.
13. The Family Court Judge will set Pretrial, Trial, and Permanency Hearing dates.

## Removal of Child from Home - Children Having Legal Status with the Department

### Procedure From Policy 500.0075: Removal of Child from Home

- A. One of the following actions must be taken by a caseworker/investigator to remove a child from home when there is an outstanding custody petition and the Department has been granted legal supervision, temporary custody or commitment:
1. Invoke a 48 hour temporary protective hold **regardless of whether or not the Department has discretion to place.** (Please see procedure Removal of Child from Home - Protective Custody .)
    - a. The caseworker/investigator meets with Legal Counsel prior to the expiration of the hold to determine if continued placement outside the home is indicated.
    - b. If the facts and evidence support the need for continued placement, an Emergency Motion for a Change of Placement/Custody must be prepared and filed with the Family Court.
  2. File an Emergency Motion for a Change of Placement/Custody. This must be presented to and approved by a Family Court Judge prior to the removal of the child(ren) from the home.
- B. To file an Emergency Motion for a Change of Placement/Custody, the following procedures are followed:
1. The caseworker/investigator meets with Legal Counsel and presents a Summary of Facts to support the decision to remove the child. The Summary should include the RICHIST ID # and a List of Witnesses.
  2. Legal Counsel prepares an affidavit with a request for ex parte relief and the Emergency Motion for a Change of Placement/Custody.
  3. Legal Counsel notifies parents' attorneys and CASA of the action to be taken so that they may be present in Court when the motion is presented.
  4. The worker along with Legal Counsel presents the Emergency Motion for a Change in Placement/Custody to a Judge at Family Court for approval.
  5. If the Judge approves the Emergency Motion, the matter will be set down for a hearing date.
  6. The worker files the signed motion with the Juvenile Clerk and distributes copies of the motion to the Office of the Public Defender, CASA, and private attorneys.
  7. The worker updates information into the Court Activity Window in RICHIST.
  8. The Legal Office will enter into RICHIST the type of petition filed.
  9. Worker must be present at the Court Hearing.
  10. If not already scheduled, a court date for a Permanency Hearing should be requested.